

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION**

CONNOR B., by his next friend, ROCHELLE
VIGURS, et al.,

Plaintiffs,

v.

DEVAL L. PATRICK, et al.,

Defendants.

CIVIL ACTION
NO. 10-CV-30073-MAP

**DEFENDANTS' MOTION TO DISMISS THE COMPLAINT
PURSUANT TO FED. R. CIV. P. 12(b)(1) AND 12(b)(6)**

Defendants Deval L. Patrick, in his official capacity as Governor of the Commonwealth of Massachusetts, Judyanne Bigby, in her official capacity as Secretary of the Massachusetts Executive Office of Health and Human Services, and Angelo McClain, in his official capacity as Commissioner of the Massachusetts Department of Children and Families, move to dismiss plaintiffs' Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

Because the pendency of this action, and the relief sought by plaintiffs, would interfere with ongoing care and protection proceedings in the Massachusetts Juvenile Court, this Court should abstain from exercising jurisdiction, pursuant to Younger v. Harris, 401 U.S. 37 (1971). Alternatively, because Plaintiffs have failed to state a claim upon which relief can be granted, this Court should dismiss the Complaint in its entirety. The Fourteenth Amendment does not afford Plaintiffs the rights they assert in Counts I

and IV of their complaint, and the First and Ninth Amendments do not afford plaintiffs the rights that they claim have been violated in Count II. In addition, the federal statute that plaintiffs seek to enforce in Count III – the Adoption Assistance and Child Welfare Act, 42 U.S.C. § 670, et seq. – does not give rise to a private right of action.

This motion is supported by the accompanying Memorandum of Law in Support of Defendants’ Motion to Dismiss the Complaint, as well as the Affidavit of Virginia Peel, General Counsel for the Department of Children and Families.

REQUEST FOR HEARING

Pursuant to Local Rule 7.1(D), defendants request a hearing on the merits of this motion.

Respectfully submitted,

THE HON. DEVAL L. PATRICK,
GOVERNOR, SECRETARY JUDYANN
BIGBY, AND COMMISSIONER ANGELO
MCCLAIN,

By their attorneys,

MARTHA COAKLEY
ATTORNEY GENERAL

/s/ Amy Spector

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August 20, 2010

Certification Pursuant to Local Rule 7.1(A)(2)

I certify that co-counsel Robert L. Quinan and I have conferred with counsel for plaintiffs, prior to the filing of this motion, but we did not reach agreement with plaintiffs' counsel on the issues presented in the motion.

/s/ Amy Spector
Amy Spector

Certificate of Service

I hereby certify that the above motion was filed through the Electronic Case Filing (ECF) system on August 20, 2010, and thus copies will be sent electronically to plaintiffs' counsel, who are identified as registered participants on the Court's Notice of Electronic Filing.

/s/ Amy Spector
Amy Spector